873

SUPREME COURT OF THE UNITED STATES.

No. 51.

BENJAMIN J. TARVER ET AL., APPELLANTS,

VERSUS

SAMUEL B. TARVER ET AL.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE SOUTHERN DISTRICT OF ALABAMA.

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Pleas had before the Hon. the District Court of the United States, at a term thereof, begun and held in and for the southern district of Alabama, on the first Monday of May, in the year of our Lord one thousand eight hundred and thirty four.

[*Original Bill.*]

TARVER ET AL. *vs.* TARVER & GILLIAM. } *In Chancery.*

Be it remembered, that heretofore, to wit, on the first day of April, in the year of our Lord one thousand eight hundred and twenty nine, Samuel B. Tarver, Charlotte Tarver, and Patience Gibson, filed in the court aforesaid their bill of complaint against Benjamin J. Tarver, Mason Gilliam, and John Gilliam, her son, in the words and figures following, to wit:

The District Court of the United States for the southern district of Alabama, at Mobile.

To the honorable William Crawford, judge of the said court, humbly complaining, show unto your honor, your orator Samuel B. Tarver, and your oratrix Charlotte Tarver, and your oratrix Patience Gibson, late Patience Tarver, who are citizens of the state of Georgia, that Richard Tarver, late of the county of Dallas, and state of Alabama, departed this life in the county aforesaid, on the day of 1827. That at the time of his death he was seized of a large estate in lands and slaves, and also possessed a large sum of money, notes, bonds, and other evidences of debts, his whole estate amounting to about seventy-five or eighty thousand dollars; that the said Richard Tarver had never been married, and left no child or children; that his father and mother are both dead; that he left three sisters, to wit, your oratrices Charlotte Tarver and Patience Gibson, the former the wife of your orator Samuel B. Tarver, and the latter the widow and relict of Gibson, now deceased, and Mason Gilliam, and Benjamin J. Tarver an only brother; that the said Charlotte, Patience, Mason, and Benjamin, are the sole heirs at law of said Richard, deceased. That the said Richard Tarver, in the year 1819, being a citizen of the state of Georgia, and in possession of a large estate in lands, and being about to take a long and perilous journey, made a conditional will, in which he recites, that being about to take a long journey, and knowing the uncertainty (meaning the uncertainty of life, from the chances that befall those who travel by land and by water) he deemed it advisable to make a will, and thereby declared that he left all his estate, real and personal, to his brother Benjamin J. Tarver, abovementioned. He also in said will provided a maintenance for his sister, Mason Gilliam, during her life, and a fund for the education of John Gilliam, son of Mason Gilliam, all which will more fully appear by a copy of the supposed will hereto attached, marked A, which is prayed to be considered a part of this bill, that the said Richard Tarver performed said journey and returned safely, that thereafter the said Richard sold out all his real estate in the state of Georgia, and converted the same into slaves, and removed to the state of Alabama in the year , and there purchased other lands of great value and extent; that the said Richard and Benjamin J. Tarver lived together and employed their capital of every description jointly; that at the time that Richard Tarver made the supposed will herein set forth, the said Benjamin J. Tarver also made a will, by which he made Richard, his brother, his sole legatee and devisee; and your complain-

ants pray that an exhibit thereof may be made in the answer of said Benjamin; that some years after the making of these wills as aforesaid, the said Benjamin J. Tarver became very ill, insomuch that his life was despaired of, that at this time the said Richard induced the said Benjamin to make and publish another will, notwithstanding the previous one, which he accordingly did, the contents of which your complainants know not, but ask that the said Benjamin may make an exhibit thereof in his answer; that the said Benjamin upon the decease of the said Richard, took possession of all his estate, and the said Mason Gilliam acquiesce in the provision in said supposed will made for her, and refuses to unite with your complainants for distribution of said estate. Your complainants beg leave further to state, that the said Richard Tarver when on his death bed, was asked by a person having no interest in the disposition which he might make of his estate, if he were not going to make a will? to which he replied, I am not going to die, it is not necessary. That he shortly thereafter departed this life, and the supposed will was found among his old receipts and refuse papers; that the supposed will purported to be attested by sundry persons as witnesses, the survivors of all whom reside in the state of Georgia; that no executor was nominated in said will, and no administration has been granted to any person; that Benjamin J. Tarver carried the said supposed will before the county court of Dallas county, and upon proof of the hand writing of two of the witnesses, and that those two witnesses were dead, the others still living in the state of Georgia, the said will was admitted to probate when in fact the said supposed probate is wholly void. Your complainants therefore pray, that the said Benjamin J. Tarver, Mason Gilliam, and John Gilliam, her son, who are all citizens of the state of Alabama, may be made defendants to this bill, that they may severally answer the allegations of this bill according to the best of their knowledge, information, and belief, as well as hearsay, and as particularly as if the same were put by way of special interrogatory, and that your honor would decree that the will may be cancelled, and the said estate distributed according to the laws of Alabama.—That the said Benjamin may set forth the full amount of the property of the said Richard, not only what he had at the time of his death, but what he had at the time the supposed will was made, describing the property at each of those times particularly, and that your honor would grant such other and further relief as justice and equity may require, and your complainants as in duty bound will ever pray.

R. G. GORDON, JOHN W. PAUL, } Solicitors for Complainants.

EXHIBIT A.

[*Exhibit A.*]

In the name of God, amen! Being about to travel a considerable distance, and knowing the uncertainty of life, think it advisable to make some disposition of my estate, do make this my last will and testament. It is my will that my brother Benjamin J. Tarver, should have all my estate both real and personal, except a competent maintainance for my sister Gilliam and her son John Gilliam, and further, he should give the said John Gilliam a liberal education, and then carry him through the study of law or physic, as he may think best; and at the age of twenty-one, give him, the said John Gilliam, twenty-five hundred dollars in money, or property.

Given under my hand this 3d May, 1819.

(Signed) RICHARD TARVER. [SEAL.]

Test: W. LYMAN, WM. BOOKER, WM. H. CARTER.

Witnesses: D. C. PATTERSON, WM. F. HAY.

PROBATE.

[*Probate of Will.*]

ORPHANS' COURT, November Term, 1827. } *State of Alabama, Dallas county.*

Personally appeared before me, James Suffold, judge of the county, and orphans' court, in the county aforesaid, Joseph Scott, who being duly sworn, saith that he knows the hand-writing of William Booker and David C. Patterson, who signed their names as witnesses to the within will, that he has seen them write; that he believes the signatures appearing thereto was their, and each of their proper acts and signatures; that to his certain knowledge both Booker and David C. Patterson are now dead.

(Signed) JOSEPH SCOTT.

Sworn to, and subscribed before me, this 12th day of November, 1827.

JAMES SUFFOLD.

13th November, H. VANDYKE, Clerk, recorded.

BILL AMENDED AS FOLLOWS, *to wit:*

That the said Benjamin J. Tarver now combining with other, to your orators unknown, to defraud your orators, are attempting to set up the said will, which was conditional in its inception, and which condition on which it was to take effect has not happened.

Amended by this insertion with leave of court.

D. FILES, Clerk.

[*Subpœna.*]

Whereupon was issued the following writ of subpœna, to wit:

The United States of America, District Court of the U. States for the southern district of Alabama.

The President of the U. States to the marshal of said district, greeting:

You are hereby commanded to summon Benjamin J. Tarver, Mason Gilliam, and John Gilliam her son, who are citizens of the state of Alabama, if to be found in said district, to be and appear before the judge of the said district court, at the city of Mobile, at the place of holding said court, on the first Monday of May next, to answer to a bill in chancery, filed by Samuel B. Tarver, Charlotte Tarver, and Patience Gibson, who are complainants against you, the said Benjamin Mason and John, as appears by said bill filed on the first day of April, 1829, a true copy whereof is herewith directed to you and each of you. Herein fail not, and have you then and there this writ.

Witness The Hon. WM. CRAWFORD, Judge of the court aforesaid, this second Monday of December, in the year of our Lord, one thousand eight hundred and twenty-eight, and of the independence of the United States of America the fifty-third year.

Issued the second day of April, in the year one thousand eight hundred and twenty-nine.

Attest: J. AUSTILL, Clk. So. Dis. Alabama.

Recd. 3d April, 1829, and executed April 7th, 1829.

F. W. ARMSTRONG, M. A. D.

[*First answer of B. J. Tarver.*]

On the 5th day of May, 1830, the said Benjamin J. Tarver filed the following answer, to wit:

The district court of the United States for the southern district of Alabama, at Mobile:

The separate answer of Benjamin J. Tarver to the bill of complaint of Samuel B. Tarver, Charlotte Tarver, and Patience Gibson, complainants in chancery.

This respondent now and at all times hereafter, saving reserving to himself all and all manner of benefit and advantage of exception that can or may be had or taken to the many errors, uncertainties, untruths, and insufficiencies in the complainants' said bill of complaint, contained for answer thereto, or unto so much, and such parts thereof as he, this respondent, is advised are material and necessary for him, this respondent, to make answer unto, he, this respondent, answering, saith that said Richard Tarver, who is now dead, did make his last will and testament in writing, a substantial copy of which is appended to the bill and marked exhibit A; that the same was made and executed in Dallas county, in the state of Alabama; that there was no condition annexed to said will, other than is shewn by the will itself, and the declaration of complainants to the contrary is untrue; that the said Richard Tarver never did, within the knowledge or belief of this respondent, express any wish or intention to alter or change said last will and testament, but always to the time of his death, so far as respondent knows or believes, recognized the same as his said last will and testament, and the only disposition he wished made of his property after his death. Respondent states, that Richard Tarver owned in Georgia at the execution of the aforesaid will, about three hundred acres of land, which he some time afterwards exchanged for other lands in Georgia, which lands still remain unsold. Respondent admits that he and Richard Tarver lived together and employed their capital jointly and for their joint benefit, and with an express agreement that the survivor should have the whole which was the joint property of both. Respondent admits he executed a will at the time, and in all respects similar to the one executed by Richard Tarver, except the provision for his sister and nephew. Respondent admits he did subsequently make another will in all respects like the first: it was voluntarily made by respondent, and for the purpose of having it attested by witnesses residing in the country, as some of the witnesses to the former will were dead and others resided in Georgia, which said will, the respondent is informed, was placed in the hands of Samuel Pruitt, and respondent has not seen it since. Respondent admits he procured the will of said Richard Tarver to be proved and admitted to record in the orphans' court of Dallas county, and hath taken upon himself the execution of said will. Respondent knows nothing of the declaration alleged to have been made by Richard Tarver, that it was unnecessary to make a will. Respondent states that the charge that the will of Richard Tarver was found among his old receipts and refuse papers is wholly untrue. Respondent states that at the execution of the will of the said Richard Tarver, a fair estimate of the value of their joint property would not exceed twenty thousand dollars, and they were indebted to Mason Gilliam, their sister, about three thousand dollars. Respondent states that the probate of said will and the grant of letters of administration to this respondent still remains in full force, not revoked or in any manner set aside: and said probate and grant of letters of administration was, as respondent has been informed and believes, in all respects legal. Respondent states he is informed and believes that said Samuel B. Tarver has used the name of Patience Gibson without her consent and against her will. Respondent being advised there is no sufficient cause set forth in said bill for the equitable interposition of the honorable court, prays the benefit of this answer as a demurrer to complainants' bill; and respondent prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

HORATIO G. PERRY, Sol. for Resp.

Benjamin J. Tarver being duly sworn in open court, saith that the facts set forth in the foregoing answer of his own knowledge are true, and he believes the whole to be true.

(Signed) BENJAMIN TARVER.

Sworn to, and subscribed in open court, this 5th day of May, A. D., 1830.
DAVID FILES, Clerk.

On the 10th day of May, in the year of our Lord one thousand eight hundred and thirty, being a day of a term of the court aforesaid, begun and held in and for the said southern district of Alabama, on the first Monday of May, in the year of our Lord one thousand eight hundred and thirty, came the complainants and respondent, as follows, to wit:

[*Exceptions to First Answer.*]

This day came the parties, by their solicitors, and the exceptions taken by the said complainants' solicitor to the answer of the said defendant being seen and inspected by the chancellor, it is ordered and decreed that the first, second, fourth, and fifth of said exceptions be allowed, and that the said defendant do within ninety days file a further and sufficient answer to the said complainants' bill of complaint.

COPY OF EXCEPTIONS.

[*Copy of Exceptions.*]

Exceptions to the answer of B. Tarver, defendant to the bill of complaint of S. B. Tarver and others.

1. The answer does not state how much the lands in Georgia were worth, nor how much land was received in exchange, nor what was the value of the lands in Georgia.

2. The answer does not state whether or not was recorded and proven as stated in the bill of complaint.

3. He does not state his hearsay or belief in relation to the execution of any other will, as called on by complainant.

4. He has not given a full and accurate account and description of the lands, slaves, notes, bonds, moneys, or either of them.

5. He does not state of how the will was proved, but undertakes to decide that it was legally done.

R. G. GORDON, Solicitor for Compt.

The first, second, fourth, and fifth exceptions sustained by the court.
DAVID FILES, Clerk.

Filed, May term, 1830, D. FILES, Clk.

AMENDED ANSWER.

[*Second Answer.*]

TARVER ET AL.
vs.
BENJN. TARVER ET AL.

District court of the United States for the southern district of Alabama, at Mobile.

And now, at this day, to wit, the 8th day of November, A. D. 1830, comes Benjamin Tarver, the defendant to the bill of complaint of Samuel B. Tarver, Charlotte Tarver, and Patience Gibson, and protesting that his said former answer was sufficient; nevertheless, for a further sufficient and additional answer to said complainants said bill of complaint, he, said defendant, saving and reserving as in his said former answer, he said defendant further answering saith, in addition to what he has heretofore stated in his said former answer, that according to the best of his information, hearsay, and belief, there is about two hundred and ninety-six acres of land of the estate of Richard Tarver and respondent, in Georgia, and received by him in exchange for the lands owned by him, and for lands owned by respondent at the time of making the will: the value defendant cannot certainly state, but have heard from others, believed to be judges of the value thereof, that the same is worth five hundred dollars. The respondent further states that the will of Richard Tarver was admitted to probate, as shown by the transcript of the

record appended to the bill marked exhibit A, which respondent believes is a true transcript of the record of probate, and the witnesses not named as being dead at the time of probate, resided out of this state. Respondent states that his application for the probate of said will was public, and so far as respondent believed in all respects legal—if there was any thing illegal therein it was unknown to this respondent—the manner of probate being attached to the record of this suit; if there be any thing illegal therein, complainants are required by strict proof to shew the same to this honorable court. Respondent has stated already, that at the execution of the will of the said Richard Tarver, a fair estimate of their joint property would not exceed in value twenty thousand dollars, and that he, said Richard, had no separate property other than what respondent has heretofore stated. That at the time of the death of the said Richard Tarver, he, said Richard Tarver, and respondent, owned jointly about two hundred and ninety-six acres of land in Morgan county, Georgia, and an undivided interest in about one hundred and sixty acres in Wilkes county, being the land which had been held by respondent's stepmother as her dower in his father's estate. They also owned jointly in Dallas county, Alabama, fractions 14 and 15, in township 16, range 11, containing about five hundred and thirty acres, and this tract was owned at the time of executing said will by Richard Tarver, and was and is worth about two thousand dollars. The following lands, jointly owned by said Richard Tarver and respondent at the time of the death of said Richard, were purchased after the execution of said will, viz. in sects. 22, 27, 28, 26, 32, of township sixteen, range eleven, in Dallas county, about seven hundred and twenty acres, worth from one thousand to fifteen hundred dollars. At Richard Tarver's death he and said respondent owned jointly about sixty slaves, worth about eighteen thousand dollars, all which but two the respondent now has in possession: one he has sold and one has died. The most of the slaves aforesaid were purchased with the proceeds of the crops raised under the immediate superintendence of this respondent. Some were purchased with money borrowed jointly by said Richard and respondent, and some are the increase of the females since they were purchased; but the particular number of each respondent is unable to say, nor can he state more particularly their joint property at the time the will of said Richard Tarver was executed. Respondent states that all the property of the said Richard Tarver and respondent was joint, so far as respondent knows, other than what is herein excepted, and that the same was procured by their joint industry, labor, and exertion, and that he knows it to have always been the intention of his brother Richard Tarver, in case respondent should survive him, to give him respondent the whole of his property, reserving as he has done in said will for his sister and nephew. Respondent states that the mules, horses, stock, farming utensils, &c. of their joint property at the death of Richard Tarver, was worth about three thousand dollars. There was at the death of Richard Tarver about four thousand five hundred dollars in cash of joint funds on hand, and about seven hundred dollars in notes, bonds, &c. and respondent and said Richard were indebted in a much larger amount than this cash and notes to a man by the name of Richards, of New York, or to a firm, Richards being one of the firm: and respondent has since paid about the sum of six thousand dollars to Barrett Ames, of Mobile, for and on account of said debt, besides other debts that were then due and unpaid by said Richard and respondent. Respondent is informed and believes, the writ of subpœna, if one was legally issued, was never served on Mason Gilliam, who is now out of this state, nor upon John Gilliam, who is a minor under twenty-one years of age.

This respondent prays all the benefit of his first answer, and that he may be hence dismissed, &c.

HORATIO G. PERRY, Sol. for Respts.

The respondent Benjamin Tarver makes oath that the facts set forth in his amended answer, as of his own knowledge are true, and that which is from the information of others he believes to be true.

BENJN. J. TARVER.

Sworn to, and subscribed this 8th November, 1830, before me,
GEORGE G. BROOKS, J. P.

TARVER ET AL. *vs.* TARVER ET AL. } The complainants by their solicitor except to the amended answer.

[*Exceptions to second Answer.*]

1st. The amended answer does not state what the lands owned by were worth at the time of making the will, nor how he disposed of the same, and whether he got a difference in exchange of lands, nor how much.

2d. The amended answer does not specify the property held at the time of making the will.

R. G. GORDON, Solicitor for Complainant.

Filed, December 24, 1830: DAVID FILES, Clerk.

TARVER ET AL. *vs.* ADMINISTRATOR TARVER ET AL. } The District Court of the United States for the Southern District of Alabama, at Mobile.

The second amended answer of Benjamin J. Tarver to the bill of Samuel B. Tarver, Charlotte Tarver, and Patience Gibson. This respondent says, that he has at all times been willing to answer, to the fullest extent, every matter in complainants' bill set forth, or inquired of, so far as in his information or belief at each time he has previously answered he deemed such answering full and sufficient: he was entirely willing to answer as to any and every matter which his counsel may have advised him was proper or material to have answered; and he presumes his counsel deemed the former amended answer sufficient. The counsel of respondent was prevented from attending at the last term of this court by official public duties, and a gentleman to whom he had written, as respondent is informed, to represent him here, was likewise prevented from attending by an accident which made it impossible he should attend. Respondent has deemed it proper to state thus much, that the idea may not be entertained, that he has at any time wished to keep out of view any information in the relation to this subject; such has never been the case. Before speaking of the land owned by Richard Tarver at the time of making his will, which is the subject of the first exception, respondent asks to state the situation of things previously being considered necessary to a full and correct understanding and decision of the matters involved. In the year 1812, or previous to 1812, the said Richard Tarver, and another brother by name Andrew Tarver, and respondent, by mutual agreement, entered into copartnership, which copartnership was by its terms to cover, and did cover all property by them held, by each, as well real as personal, as also future acquirements. The consideration, principle, and agreement on which the copartnership was formed, was that the property of each should become joint stock, and that the longest liver, the survivor, should take all the property then existing and brought in, or which might be subsequently acquired, subject to one condition, and that was, in case either of the parties married there was to be a division. At the time of this agreement and union, each of the parties were unmarried, and neither of them subsequently married. The said Andrew Tarver died in the year 1815, as near as recollected as to time, but the said Richard and respondent continued

the original agreement, and acted under it unaltered down to the period of his death. At the time of the formation of the copartnership, or joint interest, Richard Tarver had but one negro, and brought but one into the concern, a boy; he owned three hundred acres of land, deeded to him, as believed, by his father, and a few hundred dollars; this was all he brought into the joint stock or firm. Respondent then owned about nine slaves, about two hundred and sixty-six acres of land, and some money; his property and money brought into the joint concern was in amount and value considerably more than that brought in by said Richard: the lands of each were subject to the dower of their father's widow, as hereafter stated. At the formation of the union, the object mainly was, to employ the capital in planting. Richard had been previously otherwise engaged. Respondent then pursued the planting business, and this branch of the concern has always been more especially conducted and superintended by him, Richard attending to all those matters of the concern not immediately connected with the planting. Since the formation of the copartnership or joint estate, neither the said Richard or respondent did ever set up a separate claim to any article of property, be the same real or personal, unless it may have been wearing apparel; every thing else was held and considered as joint or copartnership property, and so down to the death of said Richard. Then as to the land owned by Richard Tarver at the time he made his will, it surely would be correct and sufficient to answer that he owned no separate estate at that time; according to the view of respondent the said will was made really to render unquestionable and effectual, the original and then existing agreement, that the survivor should take the whole of the joint estate, and this is rendered more evident from the fact of respondent having at the same time made a will similar in principle in favor of said Richard, the original agreement of co-partnership never having been put to paper; all the lands owned at the time of making the will by Richard, were acquired by funds derived from the joint estate in co-partnership, the 300 acres stated to have been brought in by Richard, and the 266 acres brought in by respondent; nevertheless respondent will state fully the facts so far as recollection, in regard to the lands down to the time of making the will. It has been stated that Richard owned 300 acres at the formation of the co-partnership; at that time respondent owned an undivided interest being the 266 acres before alluded to as his, in a tract of eight hundred acres, conveyed by his father to him and two other brothers, than Richard in equal interests; this 800 acres and 300 acres of Richard joined, and had formed one tract owned by John Tarver the father previous to his conveying, subsequent to the formation of the joint estate; but before the will, Richard and respondent purchased the entire interest in this 800 acres, except however, one hundred and sixteen acres, which had been assigned and was held on the improved part of this tract by the widow of John Tarver deceased, who was the father of said Richard and respondent, as also of some of the complainants; this one hundred and sixteen acres, the dower, is in a former answer stated to contain one hundred and sixty acres, by mistake: it should have been stated at one hundred and sixteen acres: respondent also believes that this dower was assigned in reference not only to the said 800 acres, but likewise in reference to the 300 acres, which had been conveyed to Richard; the two tracts joined and lay in Wilkes county, Georgia. This tract or these two tracts were sold, with the exception of the dower assigned as aforesaid, to one Thomas P. Randall, by said Richard and respondent, in the year 1822, for the sum of five thousand dollars, as well as recollected. In part payment they agreed to take a tract of about two hundred and ninety-six acres in the county of Morgan, Georgia; the amount at which this latter tract was estimated and taken, is believed to have been two thousand two hundred dollars. Lands there have since fallen much in value, and respondent is informed and believes that tract is now not worth

more than one third that sum. At the time of making the will, the fractions 14 and 15, in township sixteen, range 11, in Alabama, had been purchased; they were purchased in the year 1818, containing together about five hundred and thirty acres, and were worth at the time about two thousand dollars. Respondent has no doubt these fractions, as also all lands acquired after the formation of the joint interest, were purchased with the funds of the concern, and were intended for it. This he charges as true: these fractions, then, together with the 300 acres mentioned as originally conveyed to Richard, and the tract of 800 acres acquired as mentioned, and subject to the dower as mentioned, are all the lands that were in any manner held at the time of making the will, and these held as before stated. The two latter tracts having been subsequently sold and conveyed in the life-time of the said Richard, by him and respondent, all the other lands mentioned in the previous answers have been acquired since the will; yet as respondent insists, and charges with the funds of the firm, or joint interest, and subject to the stipulations of the original contract of union; respondent can establish by full proof, that so late as the year 1827, the said Richard declared to several persons the terms of the co-partnership or joint interest generally, and expressly stated, that although some of the lands were conveyed to him in his own name, yet that they belonged to the joint concern of him and respondent, and were property embraced by the stipulation that the survivor should be entitled to all the property, real and personal. The length of time and other circumstances make it difficult for respondent to answer with certainty as to the amount of all the property at the time of making the will. Previous to that time, to wit, in the year 1818, respondent had come to this country, Alabama, with part of the negroes and other joint stock, with a view of remaining and carrying on a plantation; a portion of the joint stock remained in Georgia with Richard; besides, Richard was and had been engaged in connection with one Hartwell H. Tarver, in speculating in negroes, and in carrying on a small store. In both these respondent was jointly interested with Richard, and equally, but he had nothing to do in the management as it was attended to by Richard, who was the oldest, most conversant with that kind of business, and because respondent attended almost entirely to the planting. The mercantile concern was closed in 1818, as his recollection is; but to the best of respondent's recollection and belief, at the time of making the will the joint concern of Richard and respondent owned forty negroes, worth about three hundred dollars a piece on an average; about five horses in the whole, worth about five hundred or five hundred and fifty dollars; about fifty head of hogs, worth, the average, two dollars fifty cents to three dollars a head; and household furniture to the value of about two hundred and fifty dollars. This, with the land before mentioned, embraces all the property recollected by respondent, with the value of each kind, according to the best of his recollection and belief. As to the amount which was due by the concern at the death of Richard, respondent has not answered specifically, but he now feels satisfied it was about the sum of eleven thousand dollars: this has all since that time been paid by respondent, except about three thousand dollars, which is still unpaid. Respondent prays to be hence dismissed, with his reasonable cost by him in this suit expended, and, as in duty bound, will ever pray, &c.

PICKENS HATHAM, Respondent's Solicitor.

Came into open court, Benjamin J. Tarver, respondent, who, being duly sworn, saith the facts stated in the foregoing amended answers, as of his knowledge, are true, and he believes the whole true.

(Signed) BENJAMIN J. TARVER.

Sworn and subscribed in open court, this 11th day of May, 1832.

DAVID FILES, Clk.

On this answer, and the one by B. Tarver for John Gilliam being filed at this term, we agree that the cause stand continued with privilege of excepting.

R. G. GORDON, Sol. for Complainants, and
PICKENS HAHAM for Respondents.

[REPLICATION.]

And for replication the said complainants say: That for any thing in said answer of defendants alleged, they should not be barred of a recovery, and that the said answer is not true.

GORDON & GOLDTHWAITE, Solicitors for Complainants.

TARVER ET AL.
vs.
ADMINISTRATOR
J. GILLIAM, TARVER ET AL.

District Court of the United States for the southern district of Alabama, at Mobile.

The answer of John Gilliam, a minor, by his guardian, *ad litem* Benjamin Tarver, to the bill of Samuel B. Tarver, Charlotte Tarver, and Patience Gibson.

The said Benjamin Tarver, for and in behalf of the said John, says that the said John Gilliam, not being cognizant of the matter in said bill set forth, neither admits or denies the matters therein set forth, and is content with such decree as the honorable court shall render in the premises. He asks that this may be received as a sufficient answer in his behalf, and that he may be hence dismissed, with his reasonable costs, &c.

The said John, by his said guardian, admits that the said Richard Tarver made a will, as stated by complainants, in which a provision is made for the said John Gilliam, as shown by the exhibit of said will,

Came into open court Benjamin Tarver, the said guardian, who, being sworn, saith the matters stated in this answer as on his own knowledge are true, and the rest he believes true.

(Signed) BENJAMIN J. TARVER.

Sworn to and subscribed in open court this 11th May, 1832, and filed 12th May, 1832. DAVID FILES, Clerk.

COPY OF SUBPŒNA.

UNITED STATES OF AMERICA.

District Court of the United States for the Southern District of Alabama.

The President of the United States to the Marshal of said district, greeting:

You are hereby commanded (as you have been before commanded as to Benjamin Tarver) to summon Mason Gilliam, and John Gilliam her son, who are citizens of the state of Alabama, so that they be before the honorable the judge of said court, at the place of holding said court at Mobile, on the first Monday of May next, to answer unto a certain bill in chancery, filed by Samuel B. Tarver, Charlotte Tarver, and Patience Gibson, who are complainants, against the said Benjamin, Mason and John, defendants, as appears by said bill filed on the 1st day of April, 1829; a true copy whereof is herewith directed to you and each of you. Herein fail not, and have you then and there this writ.

Witness The Hon. WM. CRAWFORD,
Judge of the said court, this second Monday of December, in the year of our Lord, one thousand eight hundred and thirty.

Issued the seventh day of March, in the year of our Lord one thousand eight hundred and thirty-one.

Attest: DAVID FILES, Clk. So. Dis. Alabama.

Recd. March 8th, 1831, executed March 24th, 1831, by handing a copy of bill to Mason Gilliam and John Gilliam.

JOHN S. BELL, D. Marshal. So. Dis. Ala.
for ROBT. L. CRAWFORD. Marshal.

At a term of the court aforesaid, begun and held in and for the said southern district of Alabama, on the second Monday in December, in the year of our Lord one thousand eight hundred and thirty one, came the said parties, as follows, to wit:

This day came the complainants, by their solicitor, and suggests the death of Mason Gilliam, the widow of Gilliam deceased; whereupon also during this present day, came the said complainants, by their said solicitor, and the exceptions filed by complainants to the defendants' second answer being sustained, it seems to the court, that the matters and things contained in the second answer of said defendants are insufficient, and the said defendants having failed to file a sufficient and further answer to the said complainants' bill of complaint, it is thereupon ordered, adjudged, and decreed by the court, that the said complainants' bill, and the matters and things therein contained, be taken for confessed against the said defendants; and it is further ordered that a commission issue to take testimony.

At a term of the court aforesaid, begun and held in and for the southern district of Alabama on the first Monday in May, in the year of our Lord one thousand eight-hundred and thirty-two, the said cause was continued by consent.

At a term of the court aforesaid, begun and held in and for the said southern district of Alabama on the first Monday of May, in the year of our Lord one thousand eight hundred and thirty-three, came the said parties as follows, to wit:

This cause is continued by the court under advisement.

At a term of the court aforesaid, begun and held in and for the said southern district of Alabama on the second Monday of December, in the year of our Lord one thousand eight hundred and thirty-three, the chancellor of said court pronounced the following opinion and decree in this cause:—

The object of the bill filed by the complainants is to set aside a will made by Richard Tarver, which it is alleged was improperly admitted to record by the county court of the county of Dallas, and to procure an equal distribution of his estate among his brothers and sisters, who are his next of kin.

It appears from the exhibits in the cause, that Richard Tarver made a will, by which he disposed of his whole estate to his brother Benjamin, the respondent, except a small legacy to his sister Gilliam, and her son John, which was attested by five witnesses; and that after his decease, Joseph Scott, who was not a subscribing witness, appeared before the judge of the county court for the county of Dallas, and proved the signatures of two of the subscribing witnesses, and testified that they were dead: there was no proof that the other subscribing witnesses were dead, nor that they resided without the jurisdiction of the court; and it does not appear that the county court, nor the judge thereof (for it does not appear to have been in term time), made any order in relation to the admission of the same to record; but there is a memorandum by the clerk, which states that it was recorded on the thirteenth November, without showing in what year. The answer of the respondent evaded some of the allegations of the bill, and upon exceptions filed, a more perfect answer was required. A second answer was filed, which yet did not answer all the allegations of the bill. Upon exceptions to this answer, another answer, being the third, was filed, which met the allegations of the bill, and contained much new matter not connected with the matter excepted to, nor responsive to the bill. This proceeding is a departure in pleading subversive of chancery practice, and in violation of the rules of the supreme court of the United States prescribing the mode of proceeding in chancery causes, no

rule providing for an amendid answer except so far as the answer is excepted by the complainants. This decision in regard to the irregularity of the pleading is fortified by the decision of the supreme court of the United States at its last term, in Vattier *vs.* Hinde, in which it was holden to be a departure in pleading to allege in the replication new matter not contained in the bill. 7 Peters, 252. But if the new matter not responsive to the bill contained in the second amended answer were properly before the court, and were proved to be true in every particular, yet it would not in law avail the respondent. He alleges, that in the year 1812 he and Richard Tarver, together with their brother Andrew, who died in 1815, entered into a "mutual agreement" and copartnership, which covered all their property both real and personal, as well their future acquisitions as their property in possession, and that it was verbally agreed that the survivor should become the owner of the whole property, as well that thereafter to be acquired as that which was then in possession. The right of a person founded in contract is paramount to any claim derived from a will, but can in no case be adduced as evidence of the validity of the will, nor can it in any degree contribute to the establishment of a will when contested in chancery. This proceeding was instituted to set aside the will of Richard Tarver, and no title which the respondent may have to the property of his deceased brother can be set up in this suit, except such as may be derived from the will. It must be at once perceived that the verbal agreement and copartnership, if they were established, could have no influence upon the decision of the questions which are submitted to this court, to wit: whether or not Richard Tarver made a will and testament, and whether or not that will and testament had, upon due proof before the proper tribunal, been admitted to probate. This new matter, therefore, contained in the second amended answer, is not only wholly inadmissible according to chancery practice, but is also wholly immaterial. Having disposed of this preliminary point, I will now return to the merits of the cause, as they are presented to the court.

In 4th Term Reports, 258, Lord Kenyon said, "we cannot receive any other evidence of there being a will in this case, than such as would be sufficient in all other cases where titles are derived under a will, and nothing but the probate or letters of administration with the will annexed, are legal evidence of the will in all questions respecting personalty." This principle of the common law is affirmed by the supreme court of the United States in the case of Armstrong *vs.* Lear, reported in 12th Wheaton, 175. The court say, "it is indispensable to the plaintiffs' title to procure in the first instance a regular probate of this testamentary paper in the orphans' court of this district, and set forth that fact in his bill."

In that case the answer admitted the existence and authenticity of the instrument, and submitted to the court its import and legal effect; yet the court said they could not recognize it, until it had been duly admitted to probate by the court having cognizance of such causes.

It follows necessarily, that if the complainants in this cause had even admitted the existence of the will of Richard Tarver, yet it would be indispensable to the title set up by the respondent through that will, to show that it had been duly admitted to probate by the proper orphans' court. It becomes important therefore to inquire whether that will has been duly admitted to probate. In the case of Ross *vs.* McLong, the supreme court of the United States say, "in the probate of deeds the court have a special limited jurisdiction, and the record should state facts which show its jurisdiction in the particular case." If this rule be disregarded, every deed admitted to record, on whatever evidence, must be considered as regularly admitted. They further decide that the record must show not only the judgment of the

court, but also the evidences upon which that judgment is founded, as appears from the following extract from its opinion: "In commenting upon this opinion, the supreme court observed (supreme court of Tennessee, but its decision is affirmed by the supreme court of the United States), it is not said in what county, nor upon what ground, whether because proved by witnesses, or acknowledged by the bargainer, or for some other cause. Both these exceptions were sustained, and the judgment of the inferior court was reversed. The ground of reversal appears to be that the certificate of probate stated the legal inference, without stating the fact from which that inference was drawn. In the one case it was stated that the deed was proved in court by the oath of Starus, in the other that it was legally admitted to record. If legally admitted, it could not be material to inquire whether it was admitted on the acknowledgment of the vender on the proof of witnesses. The error therefore must be, that the conclusion to which that court came is endorsed on the deed, and not the facts which led to that conclusion." 6 PETERS, Supreme Court, page 288.

It appears to this court, that the decision of the supreme court in relation to the probate of deeds equally applies to the probate of wills. The orphans' court is one of special and limited jurisdiction, and it as much concerns the community that that court in the probate of a will should render a clear and distinct judgment, and state the evidence upon which that judgment is founded, as that a court of not more limited nor special jurisdiction should in the probate of a deed set forth its judgment and the evidence upon which it rests. The subject matter too, before the orphans' court in the probate of a will, is not very dissimilar to that before the county courts in the probate of a deed, a will operating not only as a bequest of personal property but as a conveyance of real estate. The will of Richard Tarver could then be properly admitted to probate only upon the judgment of the orphans' court, having cognizance of the same, declaring that it had been duly proved, and directing it to be recorded, and shewing also the evidence upon which it is admitted. From the record before the court, it does not appear that the orphans' court pronounced any judgment in regard to the proof of the will, and from the evidence exhibited in the record, it appears that there was no competent testimony before the court by which the will could have been established. It does not therefore appear to this court that Richard Tarver made any will; his property must of course be distributed among his next of kin, as if he had died intestate.

The effect of the decision of this court must have been the same, even if it had been proved from the record exhibited in this cause that the orphans' court for the county of Dallas had pronounced judgment that the will of Richard Tarver was duly proved, and had directed it to he recorded. It is a settled rule that when a will is contested in chancery, it cannot be established unless it be proved by all the subscribing witnesses. In Powell on Devises, page 70, the law is thus laid down: "The business then of the persons required by the statute to be present at executing a will, is not barely to attest the corporal act of signing, but to *try, judge,* and *determine,* whether the testator is *compos* to sign." In equity therefore, the sanity of the devisor must be proved, which is one reason why a will can never be proved as an exhibit *viva voce* in chancery though a deed may, for there must be liberty to cross-examine to this fact of sanity. From the same consideration it is become the invariable practice of that court, never to establish a will, unless all the witnesses attesting are examined; because, the heir has a right to a proof of sanity from every one of them whom the statute has placed about his ancestor. There were five subscribing witnesses to the will of Richard Tarver, and although contested in chancery, it has not

been proved by any one of them, nor has any reason been given why they were not examined for the purpose of supporting the will.

This being the case, it would be the duty of this court, even if the will had been admitted to probate by the proper orphans' court, upon a bill filled for that purpose to set it aside, and to decree a distribution of the property of Richard Tarver among his next of kin. In this case, the court being satisfied that the will of Richard Tarver has not been admitted to probate by the proper orphans' court, and of course it not appearing to this court that he made any will, it is ordered, adjudged, and decreed, that all the property, both real and personal, and mixed, of which the late Richard Tarver died seized or possessed, and also his money and evidences of debt be distributed in equal portions among his next of kin, to wit, the complainants and respondent and Mason Gilliam sister of the deceased; and that the master in chancery take an account of the said property, money, and debts, and report to this court at its next term not only an accurate list of said property, but also its value, together with the rents and profits, after deducting the incidental expenses and increase of the same since the death of the said Richard Tarver, and also the debts which have been paid by the respondent, in order that the court may at its next term make a final distribution of the said property among his next of kin.

WM. CRAWFORD,
Judge of the United States for the northern and southern districts of Alabama.

At the term last aforesaid, of the court aforesaid, the following further order was had, to wit:

It is ordered by the court, that this cause be continued till the next term.

[*Testimony taken in chief.*]

In the District Court of the United States at Mobile.

The deposition of Lewis Johnson and John Adams, taken by consent the plaintiff's solicitor, Robt. B. Gordon and Benjamin J. Tarver being present. Lewis Johnson being duly sworn, states that he knows Samuel B. Tarver and Benjamin J. Tarver, John Gilliam and Mason Gilliam, his mother, who is now dead; the others he does not know: he knew Richard Tarver in his life time, and that he, at the time of his death, and Benjamin J. Tarver, had in their possession negroes and lands, and he believes the average value of the negroes to be about two hundred and fifty dollars; one tract of land of two hundred acres he believes to be worth five dollars per acre; and one of eighty acres to be worth three dollars per acre; and the balance one 25-100 dollars per acre. He also knows that there was in their possession about twenty-five head of mules and horses, which he believes to be worth about fifty dollars per head. The balance of the property in their possession, say cattle, hogs, and other stock, household and kitchen furniture and plantation tools, he believes to be worth between six and seven hundred dollars.

LEWIS JOHNSON.

Subscribed before me this 31st March, 1832.

WILLIAM PHILLIPS.

We agree the above deposition may be read in evidence in the trial of above case, 31st March, 1832.

BENJ. J. TARVER,
R. B. GORDON.

To Robert G. Gordon and John W. Paul, attorneys for the complainants in the case in Chancery; Samuel B. Tarver, Charlotte Tarver, and Patience Gibson, agents; Benjamin J. Tarver, Mason Gilliam, and John Gilliam, in the District Court of the United States for the southern district of Alabama, at Mobile:

Gentlemen,—Take notice, that Lewis Johnson, Samuel Pruitt, and Joseph Scott, witnesses on the part of the defendant in the above cause, will be called before me and examined as to the matters and things involved in the case on the part of the defendants, on the seventeenth day of this month, and if not examined on that day, then they will be on the next day, in the court-house at Cahauba, in Dallas county, when and where you may attend and cross-examine, if you think proper.

RICHARD S. CLINTON,
Judge of the County Court of Dallas county, and state aforesaid.

9th August, 1832.

It is agreed that the time of taking this testimony be postponed till the third Monday in September next, and agreed that it may be taken at any time during the third or fourth week of September.

R. G. GORDON, Sol. for Com.
9th August, 1832. E. PICKET.

The deposition of Lewis Johnson, aged forty-nine, produced, sworn, and examined on the part of the respondents in a certain case in chancery, wherein Samuel B. Tarver, Charlotte Tarver, and Patience Gibson are complainants, and Benjamin J. Tarver, Mason Gilliam, and John Gilliam are defendants, pending in the district court of the United States of America, in the southern district of Alabama. The said Lewis Johnson being duly sworn, upon oath saith, that in the year eighteen hundred and twenty-five or six, Benjamin Tarver lay very ill in Dallas county, at the residence of himself and his brother Richard Tarver, which was near the *the* residence of deponent, who then went to set up with Benjamin Tarver; while there, Richard Tarver, the brother of Benjamin, introduced a conversation with deponent in relation to Benjamin Tarver and other affairs. It commenced by his asking me what I thought of the situation of his brother Benjamin: I replied, I thought him dangerous. Richard then said he had a mind to get him to make a will, and related over the manner in which they held their property. Richard said that when he and his brother Benjamin commenced together in Georgia, that they had agreed to put their property together, and go equal halves in the whole, and in all they made; and that it was then agreed among them, that the longest liver should inherit all the property, in the event that either died without marrying. He stated to deponent that most of the property they then owned had been acquired since they commenced business together; that Benjamin had for the most part attended to the farm, and that he had done the trading; that all or most of the negroes bought, he, Richard, had taken bills of sales in his own name. He stated that he had attended the land sales, and that the certificates for the lands purchased were in his name; but that as to all the property, his brother Benjamin was an equal owner with himself. He then stated that in the year eighteen and nineteen they had made a will, but that he had rather Benjamin would make another will. I observed it could do no harm; and he replied, if Benjamin lived till morning, he would get him to make a will: to the best of my recollection he stated it might save future trouble. In the 1819 deponent settled in Dallas county; in the same year Richard and Benjamin Tarver resided little more than a mile from him, and they so continued to reside till the death of Richard: during all this period they and deponent were intimate, and he never heard of or observed any acts indicating any thing other than that the property was owned by them jointly.

though he never understood such to be the case other than as before stated in this deposition. It was the general understanding of the neighbourhood that they did own all the property, real and personal, jointly; he never heard it spoken of in any other way. From my acquaintance with them till the death of Richard I knew that Benjamin Tarver attended principally and almost entirely to the agricultural part of the concern. Richard attended mainly to the purchases of property: I knew him to attend the land sales, and purchase lands; and I knew him to bring on negroes, which I understood to have purchased by him; and further this deponent saith not.

LEWIS JOHNSON.

The deposition of Joseph Scott, aged forty years and upwards, produced, sworn, and examined, on the part of the respondents in a certain case in chancery wherein B. Tarver, Charlotte Tarver, and Patience Gibson are complainants, and Benjamin Tarver, Mason Gilliam, and John Gilliam are defendants, pending in the district court of the United States of America, in the southern district of Alabama.

The said Joseph Scott, being first duly sworn, upon oath saith, that in the years eighteen seventeen and eighteen he lived with Richard and Benjamin Tarver, and that in those years he heard Richard Tarver say that he and his brother Benjamin owned all their property, real and personal, jointly, and the longest liver was to have all, provided the one first dying was not married at his death: that this conversation took place in Georgia in those years; deponent was living with them as an overseer; that he heard this statement in substance both before and since those years; that he, deponent, lived six years with Richard and Benjamin as an overseer, two years in the state of Georgia, and four in Alabama; that Richard and Benjamin lived at the same place, in the same house, cultivated one plantation with the negroes, jointly, during all the time deponent lived with them; he never heard Richard or Benjamin claim any part of the real or personal, as his separate property. Deponent states that when Richard and Benjamin Tarver commenced business together, they had but little property compared with the property they had when Richard Tarver died; and most they had they made together jointly; that they, Richard and Benjamin, commenced business together, as well as deponent recollects, about the year 1815; that deponent knew Richard and Benjamin from boyhood, and if Richard had any source from which he derived a separate income, after he commenced business with Benjamin, deponent knows nothing of it; and if it had been the case, deponent thinks, from his connexion with them, he should have known it; and deponent states, that when he commenced business with Benjamin, he, Richard, had but four or five hundred dollars in money, a negro boy, and three hundred acres of land.

JOSEPH SCOTT.

The deposition of Lemuel Pruitt, aged forty-four years, produced, sworn, and examined on the part of the respondents, in a certain case in chancery wherein Samuel B. Tarver, Charlotte Tarver, and Patience Gibson are complainants, and Benjamin Tarver, Mason Gilliam, and John Gilliam are defendants, pending in the district court of the United States for the southern district of Alabama.

The said Lemuel Pruitt being first duly sworn, upon oath saith, that on the second of February, one thousand eight hundred and twenty-six, he went to the residence of Richard and Benjamin Tarver, in the county of Dallas; that Benjamin Tarver was then lying very ill: Richard stated that he wished deponent to write the will of Benjamin; that when they began the world, they put the property together; they made an agreement to make what they could, and that if either of them died before they married, the longest liver was to have all the property; that he felt interested; that he

wished the property secured to him according to their agreement. Richard, after repeating over the contract herein before stated, turned to Benjamin and asked if that was not their agreement, and Benjamin said it was. Deponent then wrote the will of Benjamin according to his understanding of the contract made between them when they their property, said will was executed by Benjamin in my presence, and attested by deponent at the request of Richard Tarver. The exhibit hereto annexed and marked B, is the will which Benjamin then executed. Richard Tarver, he and Benjamin, owned land in Georgia, and he wished that land mentioned in the will, and the land in this state also. Richard Tarver said Benjamin had attended mostly to the farm, and that he Richard had done most of the trading; that most of the negroes he Richard had purchased; the bills of sales were in his name, but that Benjamin was equally interested; that there was no distinction in any of their property. Richard said to me at a time previous to the date of the 2d of February, 1826, that he and Benjamin had made most of their property since they put their property together.

LEMUEL PRUITT.

THE STATE OF ALABAMA, *Dallas county:*

I, Richard S. Clinton, judge of the county court of said county, do hereby certify, that in virtue of an act of Congress, of the 24th September, A. D. 1789, the above-named witnesses, to wit, Lewis Johnson, Lemuel Pruitt, and Joseph Scott, were severally examined before me at Cahawba, in behalf of the respondents, and their depositions as hereto annexed and preceding were taken, *de bene esse*, to be used as testimony necessary in a civil cause depending between the parties first above named, in the district court of the United States for the southern district of Alabama: that I am neither of counsel nor attorney to either of the parties, nor interested in the event of the cause; that the depositions are taken because the said witnesses live at a distance greater than one hundred miles from the place of trial; that the complainants not being within one hundred miles of the place of taking the depositions, I caused notice to be given to Robt. G. Gordon, Esq. as their attorney, of the time and place of taking the testimony, and he was present at the taking the depositions of the said Pruitt and Scott, and was represented by Henry Goldthwaite, Esq. At the taking the deposition of the said Johnson, the witnesses were respectively examined by me, and were duly continued and sworn to testify the whole truth: that the testimony was then reduced to writing by me, and thereupon respectively subscribed by the witnesses giving it. Witness my hand and seal, this 25th day of September, 1832. RICHD. S. CLINTON. [SEAL.]

(*Report.*)

TARVER ET AL.
vs.
TARVER ET AL.

In the district court of the United States for the southern district of Alabama.

To the honorable Wm. Crawford, Chancellor:

In pursuance of an interlocutory decree made in this cause, at a term of the district court of the United States, begun and held in and for the southern district of Alabama, on the second Monday of December, in the year of our Lord one thousand eight hundred and thirty-three, I, David Files, master in chancery, to whom said cause was referred, having given thirty days' notice of the time and place, did, on the fourth Monday in February, in the year one thousand eight hundred and twenty-four, it being the twenty-fourth day of the said month of February, attend at Bayle's late Huddleston's hotel, in

the town of Selma, county of Dallas, and state of Alabama, for the purpose of preparing the report directed to be made in this cause; that I was then and there attended by Benjamin J. Tarver, the respondent, and his counsel; that on said day I caused divers witnesses to attend before me, and did examine them and cross-examine them on matters directed to be inquired of by said decree; that the examination was continued until the evening of the day next ensuing; that in consequence of the absence of complainants' counsel, I postponed the preparing of this report until the third Monday of March, one thousand eight hundred and thirty-four, giving the solicitors for complainants and respondents due notice of the time and place. That on the said day and year last aforesaid, between the hours of 9 o'clock in the fore and 4 o'clock in the after noon of said day, at the clerk's office of the district court of the United States for the southern district of Alabama, at Mobile, I caused divers other witnesses to come before me, and did then and there examine them touching the matter hereof; that neither the counsel for complainants or respondents attended; that in consequence of absence of counsel for both parties, I further postponed the preparing and making of this report until the first Monday of April, in the year of our Lord one thousand eight hundred and thirty-four, and gave notice (by delivering the same to the marshal of said district) to the solicitors of complainants and respondents of said further postponement; that I have personally examined the books of the register of the land office at Cahaba, and the records of the county court of Dallas county, upon the matters directed to be inquired of by said decree, and having considered the same, do thereupon report:—

1st. That I have stated an accurate list of the property both real and personal of which the late Richard Tarver died seized or possessed, the particulars and items of which appear in schedule A, hereunto annexed, and forming a part of this report.

2d. That I have stated the value of the property of which the late Richard Tarver died seized and possessed, and that the value of the same at the death of the said Richard was nineteen thousand nine hundred and twenty-two dollars and twenty-eight and one-half cents, the particulars and items of which will more fully appear in schedule B, hereunto annexed, and forming a part of this report.

3d. That I have stated the increase of the property both real and personal of the late Richard since his death. That the same has increased in value to the sum of nine thousand and ten dollars and eighty-four and one-half cents, the particulars and items of which appear in schedule C, and forming a part of this report.

4th. That I have stated the rents and profits on the property both real and personal, and interest on the moneys of the late Richard Tarver, from his death, in August, 1827, to the first of January, 1834, and that the same amount to the sum of twenty-six thousand five hundred and ninety-seven dollars and seventy-five cents, the particulars and items of which appear in schedule D, hereunto annexed, and forming a part of this report.

5th. That I have stated the incidental expenses or charges made by Benjamin J. Tarver upon the property both real and personal of the late Richard Tarver, and that the same amount to the sum of thirteen thousand three hundred dollars, the particulars and items of which appear in schedule E, hereunto annexed, and forming part of this report.

6th. That I have stated the debts due by the late Richard Tarver at the time of his death, and that the same amount to the sum of two thousand nine hundred and sixty-two dollars and twenty-five cents, the particulars and items of which appear in schedule F, hereunto annexed, and forming a part of this report.

7th. That after deducting all debts due by the late Richard Tarver at the time of his death, all incidental expenses upon and charges against the estate

both real and personal of said Richard Tarver, I find there is in the hands of Benjamin J. Tarver and due to the heirs of Richard Tarver, the sum of thirty-nine thousand two hundred and sixty-eight dollars and sixty-three cents, the particulars and items of which appear in schedule G, hereunto annexed, and forming a part of this report. Made at the clerk's office of the district court of the United States for the southern district of Alabama, at Mobile, this 7th day of April, in the year eighteen hundred and thirty-four.

DAVID FILES, Master in Chancery.

SCHEDULE A,

Showing a list of property, owned by the late Richard Tarver.

1st. One half of two hundred and ninety-six acres of land in Morgan county, Georgia.

2d. One share in the dower lands (being one sixth) of the widow of John Tarver, deceased, nineteen acres and one sixth, lying in Wilkes county, Georgia.

3d. One half of mills and lands adjacent (about six hundred and forty acres) in sections thirty and thirty-one, township sixteen, range twelve east, in Dallas county, Alabama.

4th. One half of thirteen hundred and one 25-100 acres of land, situate in Dallas county, state of Alabama, in sections twenty-two, twenty-five, twenty six, twenty-seven, twenty-eight, and thirty-two, of township sixteen, and range eleven east, having the following marks, and numbers, to wit:

N E 1-4, S 22, T 16, R 11, E 160 10-100, acres. W 1-2, S 22, T 16, R 11, E 320 20-100, acres. W 1-2 S W 1-4, S 25, T 16, R 11, E 83 5-100, acres. E 1-2, N E 1-4, S 28, T 16, R 11, E 85 75-100, acres. W 1-2, S E 1-4, S 25, T 16, R 11, E 88 20-100, acres. E 1-2, N E 1-4, S 28, T 16, R 11, E 80 75-100, acres. N E 1-4, S 27, T 16, R 11, E 163 50-100, acres, W 1-2, N E 1-4, S 28, T 16, R 11, E 80 75-100, acres. W 1-2, N W 1-4, S 27, T 16, R 11, E 81 78-100, acres. E 1-2, N W 1-4, S 32, T 16, R 11, E 80 45-100, acres. W 1-2, S W 1-4, S 27, T 16, R 11, E 81 75-100, acres.

5th. One half of five hundred and thirty acres of land situate in Dallas county, and state of Alabama, in fractional sections fourteen and fifteen, township sixteen, and range eleven.

6th. One half of three thousand dollars' worth of mules, horses, and farming utensils.

7th. One half household furniture, with two hundred and fifty dollars.

8th. One half of seventy-one slaves.

9th. One half of bonds, &c., to the value of seven hundred dollars.

10th. One half cash on hand, four thousand five hundred dollars.

DAVID FILES, Master in Chancery.

April 7th, 1834.

SCHEDULE B,

Giving the value of property owned by the late Richard Tarver; lands valued at first cost, negroes by B. J. Tarver.

1st. One half of 296 acre land in Morgan county, Georgia, cost 2200	$1100	00	
2d. One share of dower lands	50	00	
3d. One half of mills in Soapstone creek, Dallas county, and lands adjacent $3200	1600	00	
4th. One half of thirteen hundred and one 25-100 acres, lands in sections 22, 25, 26, 27, 28, and 32, township 16, range 11 east, situate in Dallas county, and state of Alabama, whole value $1626, 56¼,	813	28¼	
5th. One half of five hundred and thirty acres of land, situate in Dallas county, and state of Alabama, in fractional sections 14 and 15, township 16, R 11 E, $2968 00	1484	00	
6th. One half mules, horses, and farming utensils $3000,	1500	00	
7th. One half of household furniture worth $250,	125	00	
8th. One half of seventy one slaves worth $300 each, amounting $21,300	10,650	00	
9th. One half notes, bonds, &c. amounting in all to $700	350	00	
10th. One half of cash on hand $4500	2250	00	
			19,922 28¼
Total	19,922	28¼	

April 7th, 1834.

DAVID FILES, Master in Chancery.

NOTE.—In item No. 3, I have given the present value of the mills, and landed property adjacent, called the mill tract.

DAVID FILES, Master in Chancery.

SCHEDULE C,

Showing the increase of Richard Tarver's property since his death.

1st. Increase on Richard Tarver's one-half of 1301 25-100 acres of land in Dallas county, more particularly described in item 4th, schedule A, to which reference is hereby made, $4879 69	2439	84½
2d. Increase on Richard Tarver's one-half of five hundred and thirty acres of land, described in schedule A, No. 5, to which reference is hereby made	636	00
3d. Increase in number on Richard Tarver's one-half of seventy-one slaves, 13 in all, $4225	2112	50
4th. Increase in value on Richard Tarver's one-half of seventy-one slaves, 25 per cent.	2662	50
5th. Interest on Richard Tarver's one-half of $4500, up to 1st January, 1834	1260	00
Total	$9010	84½

April 7th, 1834. DAVID FILES, Master in Chancery.

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SCHEDULE D,

Showing the rents and profits which have accrued on the property, both real and personal, of Richard Tarver, from September, 1827, to January, 1834.

1827. 1st.	The profits on the cotton crop of this year, 1827, were destroyed by the burning of the steam-boat in the spring of 1828, called the Florida:—			
	One half of 5000 bushels of corn, the crop raised in the year 1827, a 50 cents per bushel .		1250	00
1828. 2d.	One-half of cotton crop for this year, 1828, being an average on the nett proceeds of sales of the crop for the years 1829, 1830, 1831, 1832, $5884 37		2942	18½
	One-half of corn crop raised this year, 1828, in all 5000 bushels, a 50 cents per bushel, $2500 .		1250	00
1829. 3d.	One-half nett proceeds cotton for 1829, $5814 43		2907	26½
	One-half of corn crop for 1829, 5000 bushels, a 50 cts.		1250	00
1830. 4th.	One-half of nett proceeds cotton crop for 1830, $4626 72		2313	36
	One-half of corn crop for 1830, 5000 bushels, a 50 cts.		1250	00
1831. 5th.	One-half nett proceeds of cotton crop 1831, $5302 77		2621	38½
	One-half of corn crop for 1831, ditto, 5000 a 50 cts.		1250	00
1832. 6th.	One-half of nett proceeds cotton crop for 1832, $8182 74		4091	37½
	One-half of corn crop for year 1832, 5000 bushels, a 50 cents		1250	00
1833. 7th.	One-half of nett proceeds of cotton crop for this year 1833, estimated at		2942	18½
	One-half of corn crop, ditto, for 1833 . . .		1250	00
			26,597	75

April 7th, 1834. DAVID FILES, Master in Chancery.

SCHEDULE E,

Showing charges made by respondents as incidental expenses against the property of Richard Tarver from the year 1827 to the year 1833 inclusive.

1827.	One half of expenses for 1827 to wit:				
1st.	Overseer's wages	$350	00		
	Physician's charges	100	00		
	Blacksmith's account	100	00		
	Carpenter's ditto	100	00		
	Negro clothing, hats and woollens .	450	00		
	Sugar &c. for sick	100	00		
	Extra services allowed B.J. Tarver's plantation,	600	00		
	Corn for household and plantation use for 1827, 4000 bushels at 50-100	2000	00		
	Whole expenses for 1827,	$3800	00	1900	00
2d.	On half expenses for 1828			1900	00
3d.	ditto 1829			1900	00
4th.	ditto 1830			1900	00
5th.	ditto 1831			1900	00
6th.	ditto 1832			1900	00
7th.	ditto 1833			1900	00
				$13,300	00

April 7th, 1834. DAVID FILES, Master in Chancery.

SCHEDULE F,

Showing the debts due by the late Richard Tarver

1st.	One half of note due on the 1st January 1829, $2297 42	$1148	71
	Interest thereon 4 months and 15 days, $68 93	34	46½
2d.	One half of note due on 1st January 1829, for $1500	750	00
	Interest thereon 4 months and 15 days, $45	22	50
3d.	One half of note due 1st January 1829, for $1182 90-100	591	45
	Interest 4 months and 15 days, $35 44	17	72
4th.	One half of note due the first of January 1829, for $771 67	385	83½
	Interest 4 months and 15 days,	11	57
		$2,962	25

April 7th, 1834. DAVID FILES, Master in Chancery.

SCHEDULE G,

Benjamin J. Tarver in account current with Richard Tarver, deceased.

1834.				Dr.
April 7th.	To sundries, as per schedule	B	19,922	28½
	" ditto ditto	C	9,010	84
	" ditto ditto	D	26,597	75
			55,530	88½

1834.				Cr.
April 7th.	By sundries, as per schedule	E	13,300	00
	" ditto ditto	F	2,962	25
	By balance carried down		39,268	63
			55,530	88
	To balance brought down		39,268	63

DAVID FILES, Master in Chancery.

April 7th, 1834.

Written Testimony taken by and before the Master in Chancery on the 24th day of February 1834, at Selma.

TARVER and TARVER ET AL. *vs.* TARVER and GILLIAM. } In the District Court of the United States for the Southern District of Alabama.

To Robert G. Gordon Esq. solicitor for S. B. Tarver, Charlotte Tarver and Patience Gibson, and Ezekiel Pickens Esq. solicitor for Benjamin Tarver and John Gilliam.

Gentlemen,—You will please to take notice, that by virtue of an interlocutory decree made in the above entitled cause, at December term last past, I will attend at the public hotel called Huddleston's, in the town of Selma, county of Dallas, between the hours of 9 in the forenoon and five in the afternoon of the fourth monday of February next, for the purpose of taking an account of the estate, both real and personal, of Richard Tarver, deceased, also of the debts due to and from said estate, etc, when and where you may if you see fit.

DAVID FILES, Master in Chancery.

Mobile January 22d. 1834.

We acknowledge service of the above notice, 22d. January 1834.

E. PICKENS.

Service acknowledged 27 January 1834,

GORDON and GOLDTHWAITE, Sol. for Comp.

District court of the United States for the southern district of Alabama.

TARVER ET AL. } In said district court of the United States for the southern
vs. } district of Alabama.
TARVER ET AL. }

To R. G. Gordon, Esq. solicitor for Samuel B. Tarver, Charlotte Tarver et al, complainants, and Ezekiel Pickens, Esq. solicitor for Benjamin J. Tarver and John Gilliam, respondents.

Gentlemen,—You will please to take notice, that the preparing and making of the report by the master in chancery in this cause is hereby further postponed until the third Monday of March next, on which day, between the hours of ten in the forenoon and three in the afternoon of said day, at the office of the clerk of the district court for said district, in the city of Mobile, I will proceed to make the same; when and where you can attend, if you see fit.

DAVID FILES, Master in Chancery.

February 25th, 1834,

Service made by me on E. Pickens, this 25th day of February, 1834, and on R. G. Gordon March, 1834,

DAVID FILES, Master in Chancery.

District court of the United States for the southern district of Alabama.

TARVER ET AL. } In said district court of the United States for the southern
vs. } district of Alabama.
TARVER ET AL. }

To R. G. Gordon, Esq. solicitor for Samuel B. Tarver and Charlotte Tarver et al. complainants, and Ezekiel Pickens, Esq, solicitor for Benjamin J. Tarver, and John Gilliam, respondents.

Gentlemen,—You will please to take notice, that the making of the report by the master in chancery in this cause is hereby further postponed until the first Monday in April next, on which day, between the hours of ten in the forenoon and three in the afternoon of said day, at the office of the clerk of the district court for said district, in the city of Mobile, I will proceed to make the same; when and where you can attend, if you see fit.

DAVID FILES, Clerk and Master in Chancery.

March 17th, 1834,

Recorded March 18th, 1834; executed 7th April, 1834, on E. Pickens and Robt. G. Gordon.

R. L. CRAWFORD, U. S. Marshal.
by J. A. BEAL, D. M.

District court of the United States for the southern district of Alabama.

The President of the United States to the marshal of said district, greeting:

You are hereby commanded to summon Edward Gautt, Lewis Johnson, Benjamin J. Tarver, Philip J. Weaver, and Adam Taylor, to be and appear before David Files, as master in chancery of said court, on the fourth Monday of February instant, at Boyle's, late Huddleston's hotel, in the town of Selma, between the hours of nine in the fore and five in the after noon of said day, then and there to testify, and the truth to say, and to answer interrogatories concerning a certain matter depending in chancery, before the court aforesaid, wherein Samuel B. Tarver and others are complainants, and Benjamin J. Tarver and John Gilliam, by his next friend, are respondents, to be then and there inquired of by said master, and what you may do forthwith make known to the said master in chancery, and have you then and there this writ.

Witness, The Hon. WILLIAM CRAWFORD,
Judge of said court, the second Monday of December, 1833.

Issued the 22d February, 1834.

Attest: DAVID FILES, Clerk Southern District Alabama.

Received 22d February, 1834, executed Edward Gantt, Lewis Johnson, P. J. Weaver, Adam Taylor and Benj. J. Tarver, the 24th February, 1834.

R. L. CRAWFORD, U. S. Marshal.
by J. A. BEAL, D. M.

TARVER ET AL.
vs.
TARVER & GILLIAM.

In the district court of the United States for the southern district of Alabama.

The President of the United States to the Marshal of said district, greeting:

You are hereby commanded to summon Barrett Ames, David Munson, John Wood, John Duncan Berrien, and David White, to be and appear before David Files, as master in chancery of said court, on the third Monday of March next, being the 17th day, at the office of the clerk of the district court of the United States for the southern district of Alabama, at Mobile, between the hours of ten in the fore, and four in the after noon of said day, then and there to testify and the truth to say, in a certain matter depending in chancery before said court, between Samuel B. Tarver and others, complainants, and Benjamin J. Tarver and another, respondents; and what you do in the premises make known to said master in chancery forthwith, and have then and there before him this subpœna.

Witness, The Hon. WM. CRAWFORD,
Judge of said court, the second Monday of December, 1833.

Issued the 15th March, 1834.

Attest:
DAVID FILES, Clk. and Master in Chancery.

Recd. 15th March, 1834, and executed.

R. L. CRAWFORD, U. S. Marshal,
by JOHN A. STEWART, D. Marshal.

TARVER ET AL.
vs.
TARVER ET AL.

In the district court of the United States for the southern district of Alabama.

The deposition of Philip J. Weaver, aged about 35 years, taken before the master in chancery, in this cause, on the 4th Monday of February, 1834, at Boglis's, late Huddleston's hotel, in Selma, Dallas county.

Philip J. Weaver being duly summoned and sworn, deposes and says, that he knows Benjamin J. Tarver, one of the defendants in this cause, but that he does not know the other parties to this suit.

He states that, to the best of his knowledge, Richard and Benjn. J. Tarver owned about six hundred and forty acres of land in Dallas county and state of Alabama, in sections thirty and thirty-one, of township sixteen and range twelve, having a mill thereon, and worth five dollars per acre; in same county and state, in sections twenty-two, twenty-five, twenty-six, twenty-seven, twenty-eight, and thirty-two, of township sixteen and range eleven, about twelve hundred acres of land, worth five dollars per acre; in the same county and state, in fractional sections fourteen and fifteen, of township sixteen and range eleven, about five hundred acres of land, worth eight dollars per acre.

He further states that he knows not the number of slaves owned by Richard and Benjamin J. Tarver, but has understood the latter has in possession a number sufficient to make from one hundred and fifty to two hundred bales of cotton (besides corn), of five hundred pounds weight each, per year: that

the value of slaves, since the year 1827, has increased one-fourth, and that the price of cotton, since 1828, has been nine cents on an average; and further this deponent saith not.

P. J. WEAVER.

Sworn and subscribed before me, this 24th day of February, 1834.

DAVID FILES, Clk. and Master in Chancery, so. dis. Alabama.

TARVER ET AL.
vs.
TARVER ET AL.

In the district court of the United States for the southern district of Alabama.

The deposition of Adam Taylor, about 35 years taken before the master in chancery, in this cause, on the fourth Monday of February, 1834, at Boglis's, late Huddleston's hotel, in Selma, Dallas county.

Adam Taylor being duly summoned and sworn, deposes and says, that he knows Benjamin J. Tarver and John Gilliam, but that he does not know the other parties to this suit.

He states that Richard and Benjamin J. Tarver owned lands in To. 16, range 12, section 30 and 31, but how much he does not know: that the value thereof, including a mill, is two dollars and fifty cents per acre. That Richard and Benjamin J. Tarver own about twelve hundred acres of land in Dallas county, Alabama, in sections 22, 25, 26, 27, 28, and 32, of To. 16, range 11, worth three dollars and fifty cents per acre, and fractional sections 14 and 15, of said township 16 and range 11, worth eight dollars per acre.

He cannot state what negro property was worth in the year 1827. He believes Benjamin J. Tarver has averaged about one hundred and seventy-five bales of cotton, of four hundred and fifty pounds weight, for the last six years, and that during that time cotton has been worth an average price of about nine cents per pound; and further this deponent saith not.

(Signed) ADAM TAYLOR.

Sworn to, and subscribed before me, this 24th day of February, 1834.

DAVID FILES, Clerk, and Master in Chancery so. dis. Ala.

Philip J. Weaver cross examined on the part of B. J. Tarver, on Tuesday, the 25th February, 1834, says that when he spoke of Richard and Benjamin J. Tarver owning the lands referred to in his examination in chief, he did so from general information, and that of his own knowledge he does not know in whom the titles thereto vested or vest. He further states that the incidental expenses of conducting a farm of one thousand acres and fifty hands are as follows: for overseer's wages, $500; physician, $100, and births, &c. $20; blacksmith and carpenter, $100 each; clothes, such as hats, shoes, and blankets, $500; sugar, &c. $100; extra services to be allowed B. J. Tarver, $500.

[*Query by Master.*]

He further states that six thousand bushels would be a fair estimate of the corn crops raised by Benjamin J. Tarver each year, that the average of price for corn is 50 cents per bushel; that it ought to take four thousand bushels per year for feeding a family, hands, and stock, such as his.

[*Query by E. Pickens.*]

He has no personal knowledge of the quantity of corn or cotton raised by B. J. Tarver each or any year. His farm is 30 miles from B. J. Tarver's, but resides six miles therefrom on the opposite side of the river.

(Signed) P. J. WEAVER.

A list of the taxable property of Richard and Benjamin Tarver, as returned for the year 1828, to wit:

Land, 1st quality, 301 acres—2d quality, 301 acres—slaves under 10 years, 20—slaves over ten, 52—cattle over 25 head, 100—1 wood clock.

For 1829.

Benjn. J. Tarver—265 acres, 2d qual.—265 acres, 3d qual.—23 slaves under 10—56 slaves over 10—100 head of cattle—1 gold watch—1 wood clock.

For 1830.

B. J. Tarver—265 acres land, 2d qual.—505 do. 3d quality—23 slaves under 10—64 over 10—100 head of cattle—1 silver watch—1 clock—$2000 at interest.

For 1831.

B. Tarver—265 acres land, 2d qual.—365 do. 3d qual.—300 acres, 4th quality—29 slaves under 10—54 over 10—$160 worth of pleasure carriage—1 saddle-horse—100 head of cattle—1 silver watch—1 wood clock—$3100 at interest.

For 1832.

B. J. Tarver—2d qual. land, 265 acres—3d qual. 1540 acres—slaves under ten, 25—slaves over ten, 56—$200 worth of pleasure carriage—cattle 100 head—1 silver watch—1 clock—$3000 at interest.

For 1833.

B. Tarver—785 acres land 2d qual.—785 acres 4th quality—20 slaves under ten, and 63 over ten—$200 worth of pleasure carriage—100 head of cattle—1 silver watch—1 wood clock—$2000 at interest.

The State of Alabama, *Dallas county:*

I, James D. Craig, clerk of the county court of said county, do hereby certify that the above and foregoing is a true transcript from the tax assessors and collectors' returns of the taxable property of Richard and Benjamin J. Tarver, on file in my office, for the years 1828, 1829, 1830, 1831, 1832, and 1833.

[SEAL.] Given under my hand and seal of office, at office in Cahaba, this 1st March, 1834.

JAMES D. CRAIG, Clerk.

Lewis Johnson, examined on Tuesday, the 25th February, 1834: being examined on the part of B. J. Tarver, says he is the same person who has been previously examined in this case by both parties, complainants and respondents; lives within one mile of B. J. Tarver, has so lived, and within one and a half miles of him, a part of the time, for fourteen years; a part of the time in the lifetime of Richard Tarver, decd., the brother of Benjn. J. Tarver; during such time intimate with B. J. Tarver, and frequently on his plantation. From his intimacy and frequent observation of the plantation and affairs of B. J. Tarver, believes he is as fully acquainted with his planting and its results in amount of crops, &c. as any of his neighbors, and he believes he can give as accurate a general estimate in relation to his planting and matters connected with it as any other. He believes the average crops of cotton raised by B. J. Tarver since the death of Richard, to wit, since 1827, would be about one hundred and fifty bales, averaging four hundred and sixty pounds. My opinion is he has averaged in the same period from three to four thousand bushels of corn per annum. I have known B. J. Tarver both to buy and sell corn during the above period. From my knowledge of his affairs it is my belief B. J. Tarver has bought as much corn as he has sold in that interval. Believes Tarver would consume on the plantation the amount of corn I have stated he raised—his object was only to put in as much corn as would do him. Thinks that fifteen hundred dollars would be a fair

estimate of the expenses of the plantation of B. J. Tarver per annum, since the death of Richard, not including the services of B. J. Tarver. Witness is acquainted with the manner in which B. J. Tarver managed his plantation affairs, and all his estimates are made from such acquaintance and his observations. He thinks the services of B. Tarver on the plantation has been worth per annum, since the death of Richard, to the estate, six hundred dollars. Looks upon B. J. Tarver as a skilful planter, and he has managed the affairs of the concern constantly and indefatigably, as much so as any planter of my acquaintance. B. J. Tarver now works forty-five hands in all.

[*Query by Master.*]

The largest crop he ever knew B. J. Tarver to raise was 240 bales, whicl was in 1832—the smallest was under one hundred (99).

[*Query by B. J. Tarver.*]

Witness says the crop of 1832 was generally large within my acquaintance, and I considered the crop of Tarver that year an extraordinary crop—it's still my opinion a fair average crop would be 150 bales.

(Signed) LEWIS JOHNSON.

An extract of the marks, numbers, and descriptions of the lands owned by and patented in the name of Richard and B. J. Tarver, taken from the land-office at Cahaba, by David Files, master in chancery.

Lands owned by Richard Tarver in township sixteen, range eleven:

Fractional sections 14 and 15, east of river, 506 1-2 acres.
Section 22, west half, 320 20-100 acres.
" 22, N. E. 1-4, 160 10-100 acres.
" 25, W. 1-2, S. E. 1-4, 88 20-100 acres.
" 26, W. 1-2, S. W. 1-4, 83 65-100 acres.
" 27, N. E. 1-4, 163 50-100 acres.
" 27, W. 1-2, N. W. 1-4, 81 35-100 acres.
" 27, W. 1-2, S. W. 1-4, 81 75-100 acres.
" 28, E. 1-2, S. E. 1-4, 80 75-100 acres.
" 28, E. 1-2, N. E. 1-4, 80 75-100 acres.
" 28, W. 1-2, N. E. 1-4, 80 75-100 acres.
" 32, E. 1-2, N. W. 1-4, 80 45-100 acres.

Benjamin J. Tarver, the respondent, and a witness duly summoned to attend the master in chancery, at Selma, did attend on the 24th of February, 1834, and in his own person, and by counsel, did refuse to be examined by the master in chancery—and in consequence of such refusal made no answer to any interrogatories or questions propounded to him.

The testimony of Barrett Ames, David Munson, John Wood, John Duncan, Berrien, and David White, witnesses summoned by the master in chancery, and who were examined by the master in chancery touching the matters directed to be inquired of by him in this cause, was not reduced to writing, because neither complainants or respondents did attend to examine or cross-examine them.

And now this day, that is to say, on the tenth day of May, in the year of our Lord one thousand eight hundred and thirty-four, being a day of a term of the court aforesaid, begun and held in and for the southern district of Alabama, on the first Monday of May, in the year last aforesaid, came the said parties as follows, to wit:

TARVER ET AL. This court having by its interlocutory decree of the last term directed that the master in chancery should take an account of the estate of Richard Tarver, deceased, and also the money and debts, and make a report not only of the said estate, but also

its value, together with the rents and profits, after deducting the incidental expenses and the increase of the same since the death of the said Richard Tarver, and also the debts which have been paid by the said respondent, Benjamin J. Tarver, preparatory to a final partition and distribution of the said estate among the heirs at law and next of kin of the said Richard Tarver: and the said master in chancery having made his report touching the matters submitted to him, and no exceptions having been taken or filed to the said report, it is ordered, adjudged, and decreed, that the said report be received and confirmed. And it is further ordered, adjudged, and decreed, that the master in chancery proceed to lay off and partition the real estate named in schedule A of the said report, so far as the same is within the jurisdiction of this court, among the heirs at law of the said Richard Tarver, decd. in manner following, that is to say: To the said complainant, Charlotte Tarver, wife of Samuel B. Tarver, one-fourth part according to quantity and quality, and to the said complainant, Patience Gibson, one-fourth part, according to quantity and quality; and to the said respondents, Benjamin J. Tarver and John Gilliam, who is a minor and heir at law of Mason Gilliam, who has departed this life during the pendency of this suit, one half the said lands according to quantity and quality.

And it is further ordered, adjudged, and decreed, that the said Benjamin J. Tarver place in the hands and possession of the master in chancery, the personal estate mentioned in schedules A and C of the said report, and in default thereof that he be attached for a contempt of this court.

And it is further ordered, adjudged, and decreed, that the said master in chancery, after giving thirty days' notice of the time and place of sale in some newspaper printed in the city of Mobile, proceed to sell the said personal estate at public outcry for cash, and paying the expenses of such sale out of the proceeds thereof, distribute the same in manner following, that is to say: to the said respondent, Benjamin J. Tarver, who was joint owner therein with Richard Tarver, deceased, one half; to each of the complainants, Samuel B. Tarver and Patience Gibson, one fourth part of the remaining one half; to the said respondent, Benjamin J. Tarver, one fourth part of the said remaining half; and to the proper guardian of the said respondent, John Gilliam, the other fourth part of the remaining half.

And it is further ordered, adjudged, and decreed, that the remainder of the said estate, amounting to the sum of fourteen thousand one hundred and ninety five dollars and fifty cents, in the hands of the said respondent Benjamin J. Tarver, as appears by schedules A, B, C, D, E and F, be distributed as follows: to the said complainant, Samuel B. Tarver, one fourth part, amounting to the sum of three thousand five hundred and forty-eight dollars eighty seven and half cents; to the said complainant, Patience Gibson, one fourth part, amounting to the sum of three thousand five hundred and forty-eight dollars eighty seven and half cents; and to the said John Gilliam, one fourth part, amounting to the like sum of three thousand five hundred and forty eight dollars eighty seven and half cents; and the remaining fourth to the said respondent Benjamin J. Tarver; and that the said Benjamin J. Tarver pay over to the said complainants respectively the said sums of money, or that execution may issue therefor.

And it is further ordered, adjudged, and decreed, that the titles to the said lands after the partition shall be made pursuant to this decree, shall vest, and the same is hereby vested in the said parties respectively. And it is further ordered, adjudged, and decreed, that day be given to the said John Gilliam, who is a minor, to impeach and set aside this decree until he shall attain the age of twenty one years and six months.

And it is further ordered, adjudged, and decreed, that the said Benjamin J. Tarver pay the costs of this suit, for which execution may issue.

To the honorable Willlam Crawford, judge of the district court of the United States for the district of Alabama.

Benjamin J. Tarver asks an appeal to the supreme court of the United States, at its next term, from the decree rendered by your honor in the case of Samuel B. Tarver and other complainants, against Benjamin J. Tarver and others in the district court of the United States for the southern district of Alabama. We ask your honor to approve the requisite bond, &c. herewith submitted. E. PICKENS, Attorney for B. J. Tarver.

Appeal allowed, and the accompanying bond approved, this 21st day of June, 1834.

WM. CRAWFORD, Judge of said court.

I, David Files, clerk of the district court of the United States in and for the southern district of Alabama, do hereby certify that the above and beforegoing forty-eight pages, containing a full, true, and perfect exemplification of the record and proceedings, together with the written testimony taken by and before the master in chancery in making up his report, and notices and subpœnas issued by him, and also of the grant of appeal and petition for the same, of a certain cause lately depending and determined in said court, wherein Samuel B. Tarver, and Charlotte his wife, and Patience Gibson, were complainants, and Benjamin J. Tarver and John Gilliam were respondents.

In testimony whereof, at office in the city of Mobile, I have hereunto set my hand, and affixed the seal of said court, this second day of August, in the year of our Lord, one thousand eight hundred and thirty four.

[SEAL.]

DAVID FILES, Clerk sou. dist. Ala.

To Samuel B. Tarver, Charlotte Tarver his wife, Patience Gibson, or Gordon and Goldthwaite, their solicitors.

Notice is hereby given you, that Benjamin J. Tarver has applied for and has obtained an appeal to the next term of the Supreme court of the United States, from the decree rendered by the district court of the United States for the southern district of Alabama, in the case of Samuel B. Tarver, Charlotte Tarver his wife, and Patience Gibson, complainants, against Benjamin J. Tarver, Mason Gilliam, and John Gilliam, defendants: and you are hereby cited to be and appear at the next term of said Supreme court, to be held at the city of Washington, on the 2d Monday in January next, to shew cause, if you see fit, why the said decree should not be reversed and set aside.

Witness, William Crawford, Judge of the District court of the United States for the southern district of Alabama, this 21st day of June, A. D. 1834.

WILLIAM CRAWFORD,
Judge of the United States for the southern district of Alabama.

The Marshal will serve and return this precept.

Wm. Crawford, Judge.

Received 1st July, 1834; executed the same day, by handing a copy of this notice to Robert G. Gordon, Esq. of the firm of Gordon & Goldthwaite.

R. L. CRAWFORD, U. S. Marshal,
by John A. Stewart, Dep. Marshal.

I, David Files, clerk of the district court of the United States in and for the southern district of Alabama, do hereby certify that the foregoing is the original citation issued by the honorable William Crawford, judge of said court, together with the return of the marshal hereon made, in a suit lately depending and determined in the court aforesaid, wherein Samuel B. Tarver,

and Charlotte his wife, and Patience Gibson, were complainants, and Benjamin J. Tarver and John Gilliam, were respondents.

In testimony whereof, at office in the city of Mobile, I have here-
[SEAL.] unto set my hand and affixed the seal of the said court, this 2d day of August, one thousand eight hundred and thirty-four.

DAVID FILES, Clerk Sou. Dist. Ala.